

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 12/15/2011

Action Requested By:
Engineering

Agenda Item Type
Resolution

Subject Matter:

Memorandum of Understanding between the City of Huntsville and the Health Care Authority of the City of Huntsville d/b/a Huntsville Hospital

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Memorandum of Understanding between the City of Huntsville and the Health Care Authority of the City of Huntsville d/b/a Huntsville Hospital for the demolition and removal of the Wilson Cleaners Building

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

This memorandum of understanding is for the demolition and removal of property located at the southwest corner of Governors Drive and Franklin Street known as the Wilson Cleaners building.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head:



Date:

revised 4/13/2011

ROUTING SLIP

CONTRACTS AND AGREEMENTS

Originating Department: **Engineering**

Council Meeting Date: **12/15/2011**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **Memorandum of Understanding**

Document Name: **Huntsville Hospital MOU Project No. 65-06-RD04**

City Obligation Amount: **N/A**

Total Project Budget: **N/A**

Uncommitted Account Balance: **N/A**

Account Number: **23-6500-0813-8127**

Procurement Agreements

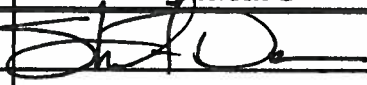
Not Applicable

Not Applicable

Grant-Funded Agreements

Not
Applicable

Grant Name:

Department	Signature	Date
1) Originating		12/14/11
2) Legal		
3) Finance		
4) Originating		
5) Copy Distribution		
a. Mayor's office (2 copies)		
b. Clerk-Treasurer (Original & 2 copies)		
c. Legal (1 copy)		

RESOLUTION NO. 11-

WHEREAS the City Council of the City of Huntsville, Alabama, does hereby declare in accordance with Code of Alabama (1975) that the Mayor be, and he is hereby authorized to enter into a Memorandum of Understanding between the City of Huntsville and the Health Care Authority of the City of Huntsville d/b/a Huntsville Hospital for the demolition and removal of the Wilson Cleaners Building, on behalf of the city of Huntsville, a municipal corporation in the State of Alabama, which said Memorandum of Understanding is substantially in words and figures similar to that certain document attached hereto and identified as a "Memorandum of Understanding between The City of Huntsville and the Health Care Authority of the City of Huntsville d/b/a Huntsville Hospital, consisting of three (3) pages plus Exhibit "A" and the date of December 15, 2011" appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the ____ day of _____, 2011.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the ____ day of _____, 2011.

Mayor of the City of Huntsville,
Alabama

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF HUNTSVILLE,
ALABAMA AND THE HEALTH CARE
AUTHORITY OF THE CITY OF HUNTSVILLE
d/b/a HUNTSVILLE HOSPITAL

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into this _____ day of _____, 2011 by and between the City of Huntsville (the City), a municipal corporation in the State of Alabama and the Health Care Authority of the City of Huntsville d/b/a Huntsville Hospital, an Alabama health care authority (the Authority).

RECITALS

WHEREAS, the Authority is the owner of certain property located at the southwest corner of Governors Drive and Franklin Street in the City of Huntsville (the "Property"), which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, the said property contains a building known as the Wilson Cleaners Building (the Building); and

WHEREAS, the Authority desires to have the Building demolished and removed; and

WHEREAS, the removal of the Building will be of benefit to the City's Governors Drive widening project; and

WHEREAS, the City has the resources available to complete the removal of the Building; and

WHEREAS, the parties desire to have the City complete the demolition and removal of the vertical portion of the Building on the terms and conditions set forth herein;

IT IS THEREFORE agreed and understood by the parties as follows:

1. Within thirty (30) days of the execution of this Agreement, the City will demolish and remove the vertical portion of the Building from the Property. The City will leave all ground structures, including but not limited to sidewalks and building slabs, intact.
2. The Authority to the fullest extent permitted by law, shall indemnify and hold harmless the City of Huntsville its elected and appointed officials, employees, agents and

**President of the City Council of the City
of Huntsville, AL**
Date: _____

specified volunteers against all claims, damages, losses and expenses, resulting from or attributable to the demolition and removal of the Building, including but not limited to any release or threatened release of drycleaning agents, hazardous substances, hazardous wastes, pollutants, or contaminant resulting from or alleged to have resulted from demolition of the structure, any increase in cost or alleged increase in cost for assessment of drycleaning agents, hazardous substances, hazardous wastes, pollutants or other environmental contaminants at the site, any increased cost or alleged increase in cost for sampling, testing and monitoring to determine the presence of drycleaning agents, hazardous substances, hazardous wastes, pollutants, or contaminants at the site or to determine the extent of off-site migration, and any increase in cost or alleged increase in cost of environmental remediation activities at the site resulting from or alleged to have resulted from demolition of the structure. This agreement to release, defend, indemnify and hold harmless the City of Huntsville specifically includes, but is not limited to any claim for contribution brought under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, *et seq.*) or any other Federal or State law to recover any cost whatsoever associated with the release or threatened release of drycleaning agents, hazardous substances, hazardous wastes, pollutants or contaminants, or any claim or action alleging that the City of Huntsville is a potentially responsible party as a result of demolition of the structure, and also includes, but is not limited to any administrative action or civil action brought by the United States Environmental Protection Agency, the Alabama Department of Environmental Management or any other administrative agency of the United States or the State of Alabama as a result of demolition of the structure. This agreement to release, defend, indemnify and hold harmless the City of Huntsville also includes, but is not limited to any claim or action to recover damages brought by any person or entity that has been harmed or alleges to have been harmed by demolition of the structure. As used in this agreement, the term "drycleaning agent" has the same meaning as in the Alabama Drycleaning Environmental Response Trust Fund Act (Code of Ala, 1975, §22-30D-1, *et seq.*), the terms "hazardous substance" and "release" have the same meaning as in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, *et seq.*), the term "hazardous waste" means any material or substance subject to regulation under Subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. § 6921, *et seq.*), the term "pollutant" has the same meaning as in the Alabama Water Pollution Control Act (Code of Ala, 1975, §22-22-1, *et seq.*), and the term "contaminant" means any substance that could cause harm to human health or the environment that is present in air, soil, surface water, storm water or ground water as the direct or indirect result of human activity.

3. This agreement shall be governed by the laws of the State of Alabama. Venue of any action to enforce the terms of this agreement shall be in the state or federal courts of Alabama.

4. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

5. This Agreement may not be amended or modified unless such amendment is (i) in writing, (ii) signed by authorized representatives of all parties.

6. The failure by a party to exercise or enforce any right hereunder shall not operate as a waiver of such party's right to exercise or enforce such right or any other right in the future.

7. If any provision of this Agreement shall be deemed to be invalid, void, or unenforceable then it shall be severed and not affect any other provisions contained herein.

8. No party to this Agreement shall be held responsible for delay or default caused by fires, riots, acts of God and/or war which is beyond the reasonable control of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first written above.

**CITY OF HUNTSVILLE, ALABAMA,
A Municipal Corporation**

ATTEST: _____
Charles E. Hagood
Clerk-Treasurer

By: _____
Tommy Battle
Mayor, City of Huntsville

**HEALTH CARE AUTHORITY OF
THE CITY OF HUNTSVILLE d/b/a
HUNTSVILLE HOSPITAL**

ATTEST:  _____

By:  _____

EXHIBIT "A"

All that part of Block 3, of the Longwood Addition as of record in Plat Book 1, page 126 ½ in the Office of the Judge of Probate, Madison County, Alabama, particularly described as beginning at a point on the South margin of Coltart Lane; said point is further described as being North 89 degrees 0 minutes East 320.6 feet from the Northwest corner of said Block 3, and being the intersection of the East margin of Whitesburg Drive and the South margin of Coltart Lane; thence from the place of beginning South 1 degree 0 minutes East 107.0 feet to a point on the North margin of Fifth Avenue; thence North 89 degrees 0 minutes East along the North margin of Fifth Avenue 100.0 feet to a point; thence North 1 degrees 0 minutes West 107.0 feet to a point on the South margin of Coltart Lane; thence South 89 degrees 0 minutes West along the South margin of Coltart Lane 100.0 feet to the place of beginning.